are veritable traps to lawyers with clients in different states and to land officers subject to inter-state transfers — not to mention the Federal Court when we go on circuit.

In our judgment, the sole test is simply this: does the impugned provision enacted by Parliament ensure uniformity of law and policy? If it does, it is constitutional, regardless of the position previously. If it does not, it is unconstitutional. By this test, the impugned section is within the power of Parliament to enact.

For the above reasons we dismiss this suit with costs.

Suit dismissed.

Solicitors: *Skrine & Co.*

POW HING & ANOR. v. REGISTRAR OF TITLES, MALACCA

[F.C. (Raja Azlan Shah Ag. L.P., Abdul Hamid F.J. & Abdoolcader J.) December 18, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 230 of 1980]

Land Law — Transfer of land — Transfers submitted for registration — Instruments rejected — Purported forfeiture of land for arrears of land rent — Note of service of notice of demand of arrears not endorsed on the register document of title — No order made for forfeiture — Publication of notification in Gazette — Publication after date of presentation of instruments — Refusal to register instruments wrong — Indefeasibility of title — Validity of forfeiture — Failure to comply with provisions of the law — Mandatory provisions — Note or endorsement made ex post facto — Registrar's caveat — Government Proceedings Ordinance, 1956, s. 29 — National Land Code, 1965, ss. 93, 97, 98, 100, 130, 131, 133, 134, 320, 321, 418.

Administrative Law — Forfeiture of land — Need to comply with statutory requirements — Exercise of powers and duties — Need to comply with the law — National Land Code, 1965, ss. 97, 100 & 133.

In this case the registered proprietor of land in Malacca had executed on August 3, 1979 a memorandum of transfer in favour of the appellants in specified shares. On December 18, 1979 the memorandum of transfer and a discharge of a charge were transmitted to the respondent for registration together with the the relevant issue document of title. At that time the register disclosed that the title was clear and presentation of the instruments was entered as having been made on December 27, 1979. On January 2, 1980 the 2nd appellant executed a memorandum of transfer of his share in the land to the 1st appellant. This transfer and a charge executed on January 18, 1980 were presented for registration on January 23, 1980. On February 1, 1980 the solicitors for the appellants were informed by their agents that the two instruments had been rejected by the respondent on January 31, 1980. On February 6, 1980 the appellant's solicitors received a letter from the respondent dated January 29, 1980 rejecting the transfer and discharge presented for registration on December 27, 1979. A further search was made and this revealed an undated and unsigned note to the effect that Form 6A (a notice of demand for arrears of rent) was issued on September 18, 1978 and registered on September 25, 1978. A notification in form 8A was published in the *Gazette* on January 31, 1980. It appeared that the registered proprietor applied to the State Authority on June 26, 1979 for the annulment of the forfeiture but this was rejected on December 12, 1979. On February 9, 1980 the respondent entered a Registrar's caveat against the land. The appellants appealed to the High Court in respect of the transfer and discharge and the subsequent transfer and charge against the refusal of the respondent to register the instruments presented. They also claimed relief by way of cancellation of any endorsement on the register in respect of the purported forfeiture and restriction of transactions. The learned trial judge held that the respondent's refusal to register the instruments presented was wrong and he made declarations to that effect. However he held that the Collector had since completed the forfeiture and the land had become State land, so that the order sought by the appellants to set aside the forfeiture amounted in effect to proceedings for the recovery of land from the State Authority and this were debarred by section 29 of the Government Proceedings Ordinance. 1956. The appellants appealed.

Held: (1) the Collector of Land Revenue had failed to comply with the mandatory provisions of sections 97(2) and 100 of the National Land Code and therefore the purported forfeiture of the land was invalid and must be set aside;

(2) the learned judge was correct in holding that the respondent was wrong in law in having refused to register the instruments presented by the appellants;

(3) the Registrar's caveat entered should be expunged and the respondent be directed to register the instruments presented by the appellants;

Cases referred to:-

(1) *Frazer* v. *Walker* [1967] 1 A.C. 569, 580 & 585.
(2) *Eng Mee Yong* v. *V. Letchumanan* [1979] 2 M.L.J. 212, 214.
(3) *Howard* v. *Bodington* (1877) 2 P.D. 203, 210 and 211.
(4) *F.* v. *F.* [1971] P. 1, 11 and 12.
(5) *London & Clydeside Estates Ltd.* v. *Aberdeen District Council & Anor.* [1980] 1 W.L.R. 182, 189.
(6) *Tham Hing Kwai* v. *State of Negeri Sembilan & Ors.* [1932] M.L.J. 31, 40.
(7) *Collector of Land Revenue, Tapah* v. *Chong Loke Chong* (1923) 3 F.M.S.L.R. 60, 65.

FEDERAL COURT.

N. Ramachandran (*Joseph Chia En Tet* with him) for the appellants.

Dato Abu Mansor bin Ali (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Abdoolcader J. (delivering the judgment of the Court):

PRELIMINARY: THE FACTS AND BACKGROUND

The State Authority of Malacca within the definition of the National Land Code, 1965 has fallen victim to the bureaucratic bungling of a land office functionary, with disastrous consequences and leaving in its wake frustrated officialdom — that is the moral and indeed the net effect of the requisite orders we made on the conclusion of somewhat brief submissions by counsel on both sides in allowing this appeal from the decision of Wan Yahaya J., involving the validity of the purported forfeiture of a parcel of land in Malacca by the Collector of Land Revenue, Alor Gajah, in the exercise of his powers conferred by the relevant provisions of the National Land Code ('the Code').

The facts of the matter are clear and simple and not in dispute; what is in issue is a pure question of law. It is necessary by way of background in considering the question of law involved to briefly set out a narrative of the facts and circumstances culminating in these proceedings to appreciate and evaluate the events that have transpired, the necessity for the appellants to resort to judicial process for the determination of their rights and the judgment delivered in this regard by the learned judge. To avoid tautology, all references to statutory provisions in this judg-

ment are in respect of the Code unless otherwise specifically indicated.

On January 3, 1979 Siang Hon Fong agreed to purchase the land in question in the Mukim of Taboh Naning, Malacca, for the sum of $144,278.40 from the Transport Workers' Multi-Purpose Co-Operative Society Limited, the registered proprietor, which executed a memorandum of transfer of the land on August 3, 1979 in favour of the appellants in specified shares as the purchaser's nominees. On December 18, 1979 the memorandum of transfer and a discharge executed on June 30, 1979 of a then existing charge in favour of the United Asian Bank Berhad were transmitted to the respondent for registration together with the relevant issue document of title to the land when the register disclosed the title was clear and presentation of these instruments was entered as having been made on December 27, 1979. On January 2, 1980 the 2nd appellant executed a memorandum of transfer of his share in the land to the 1st appellant.

As there was no response from the respondent with regard to the instruments presented for registration, the appellants' solicitors caused their agents in Malacca to make a search of the title on January 23, 1980 and this disclosed no record of any encumbrances whatsoever on the register except for the charge in favour of the United Asian Bank which was the subject-matter of the discharge presented for registration. The transfer from the 2nd appellant to the 1st appellant and a charge executed by the latter on January 18, 1980 in favour of The Hongkong & Shanghai Banking Corporation were also presented for registration by the appellants' solicitors' agents in Malacca on the same day, January 23, 1980, but the appellants' solicitors were informed by their agents by a letter dated February 1, 1980 received the following day that these two instruments had been rejected by the respondent on January 31, 1980.

On February 6, 1980 the appellants' solicitors received a letter from the respondent dated January 29, 1980 rejecting the transfer and discharge presented for registration on December 27, 1979. The appellants' solicitors then instructed their agents in Malacca to make a further search which they did on February 8, 1980 and found this and for the first time on the register an undated and unsigned note to the effect that Form 6A (which is a notice of demand for arrears of land rent under section 97(1)) was issued on September 18, 1978 and registered on September 25, 1978, and they also discovered that the other recorded entries including those relating to the presentation of the transfer and discharge on the register had since been cancelled. On February 13, 1980 Joseph Chia En Tet, the solicitor dealing with this matter for the appellants, called on the respondent who admitted that this endorsement on the title we have referred to was only made after he had been informed by the Alor Gajah Land Office subsequent to the search made by the appellants' solicitors' agents on January 23, 1980 that a notice in Form 6A under section 97(1) had been issued in respect of the land.

We now turn to a recapitulation of the events leading to the purported forfeiture of the land in question. It would appear from the affidavit evidence that on September 19, 1978 a notice of demand in Form 6A under section 97(1) issued the day before was served on the registered proprietor by or at the instance of the Collector of Land Revenue, Alor Gajah, for arrears of land rent in the aggregate sum of $1,049.60. There was however no compliance with the provisions of section 97(2) requiring that a note of the service of any such notice shall be endorsed, by or at the instance of the Collector, on the register document of title to the land to which the notice relates. The registered proprietor failed to pay the arrears within the specified period of three months from the date of service of the notice, and the Collector in his affidavit says that he accordingly on June 21, 1979 declared the land forfeit to the State Authority pursuant to the provisions of section 100. However, it would appear from his affidavit that there was no order as such under section 100 and what he refers to and exhibits as the order of forfeiture is only Form 8A which is a notification of the forfeiture under section 130(1) for publication in the *Gazette* which is required to be done as soon as may be after the making of an order under section 100 declaring the land forfeit to the State Authority. The notification in Form 8A was once again only published in the Gazette on January 31, 1980 and section 130(1) provides that the forfeiture shall take effect only upon such publication. It will be seen that the publication was made only after the presentation of the instruments we have referred to for registration.

The registered proprietor applied to the State Authority under section 133(1) on June 26, 1979 for the annulment of the forfeiture but this was rejected on December 12, 1979. On February 9, 1980 the respondent entered a Registrar's caveat under the provisions of section 320(1)(a) and (b)(i) and in his affidavit says that by virtue of section 319 he rejected all the instruments presented by the appellants for registration.

The appellants then appealed to the High Court under section 418 by way of two identical motions, one in respect of the transfer of the two appellants and the discharge of the then existing charge and the other in respect of the transfer of the 2nd appellants' share to the 1st appellant and the latter's charge in favour of The Hongkong & Shanghai Banking Corporation, against the refusal of the respondent to register the instruments presented and also claiming relief by way of cancellation of any endorsement on the register in respect of the purported forfeiture and restriction of transactions and for all necessary consequential orders in relation thereto.

The learned judge in a reserved judgment quite properly held the respondent's refusal to register the instruments presented to be wrong and made declarations to that effect, correctly reflecting the pronouncements of their Lordships of the Privy Council in *Frazer* v. *Walker*[1] that the conception of indefeasibility of title is central in the system of registration (at page 580) and that registration confers upon a registered proprietor a title to the interest in respect of which he is registered which is immune from adverse claims other than those specifically excepted (at page 585), and again in *Eng Mee Yong & Ors.* v.

V. Letchumanan[2] that the Torrens system of land registration and conveyancing as applied by the Code has as one of its principal objects to give certainty to title to land and registrable interests in land (at page 214). The respondent accepts the decision on this aspect and has not cross-appealed on this issue.

The learned judge, however, went on to hold that the Collector has since rightly or wrongly, as he puts it, completed the forfeiture and the land is now State land and that the order sought by the appellants to set aside the forfeiture amounts in effect to proceedings for the recovery of the land from the State Authority which he says are debarred by the provisions of section 29 of the Government Proceedings Ordinance, 1956. He went on perhaps by way of solatium to suggest that it is open to the appellants to claim damages against the respondent or the Collector or to seek relief by way of 'a declaratory order in more specific terms under the Specific Relief Act, 1950'. It is only against this part of his decision refusing to set aside the forfeiture that the appellants have appealed, and the only issue for consideration before us is the validity of the forfeiture and whether it can and should be set aside.

THE ISSUE IN LAW: IS THE FORFEITURE VALID?

There have been several infractions of the provisions in the Code relating to the machinery for forfeiture of alienated land for arrears of land rent in respect of the forfeiture of the land in question and it will therefore be necessary to consider the effect of these as a result on the forfeiture purported to have been ultimately effected. We would just mention *en passant* as a matter of interest that the equivalent conglomerate provisions of section 129 prescribing the mechanism for action to enforce forfeiture for breach of condition of title encompass identical requirements on the material aspects arising in this matter contained in sections 97 to 100.

The matter resolves *ex facie* in the first instance into a conventional invocation and consideration of the traditionally formulated distinction between mandatory and directory requirements in a statute which perhaps underlies the practical and realistic recognition of the fact that adherence to legislative prescriptions cannot always be too literal or rigid lest the machinery of administration is not allowed a little play in its joints. The *locus classicus* explaining this distinction and the consequences for non-compliance in either case is *Howard* v. *Bodington.*[3] The principle involved is too well-known to require setting out *in extenso* that part of the judgment of Lord Penzance, Dean of Arches, propounding it (at pages 210-211) but he went on to say that no formula existed to determine whether a particular provision was mandatory or directory (at page 211):

"I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

The basis of the distinction between mandatory and directory provisions was challenged in *F.* v. *F.*[4] when an issue arose out of a failure to comply with a section of the English Matrimonial Causes Act, 1965. Sir Jocelyn Simon, P., considered this distinction in his judgment (at page 11) and stated that in some of the older authorities it seems to have been envisaged there were only two possible outcomes — either the transaction was void or it was valid, in dealing with the effect of the failure to comply with a statutory injunction on the validity of the subsequent transaction. He then went on to say (at page 12):

"Moreover, it is now clear that there are not only two possible consequences of non-compliance with a statutory or other legal stipulation, but three — the subsequent transactions may be neither void nor valid but voidable."

In *London & Clydeside Estates Ltd.* v. *Aberdeen District Council & Anor.*,[5] the House of Lords held that the requirement that a certificate of alternative development in compulsory purchase proceedings should include information as to the rights of appeal was mandatory and the omission of it vitiated the certificate. Lord Hailsham of St. Marylebone, L.C., in the course of his judgment said (at page 189):

"...we are considering the effect of non-compliance by a statutory authority with the statutory requirements affecting the discharge of one of its functions. In the reported decisions there is much language presupposing the existence of stark categories such as 'mandatory' and 'directory,' 'void' and 'voidable,' a 'nullity,' and purely regulatory.'

Such language is useful; indeed, in the course of this opinion I have used some of it myself. But I wish to say that I am not at all clear that the language itself may not be misleading in so far as it may be supposed to present a court with the necessity of fitting a particular case into one or other of mutually exclusive and starkly contrasted compartments, compartments which in some cases (e.g. 'void' and 'voidable') are borrowed from the language of contract or status, and are not easily fitted to the requirements of administrative law.

When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events. It may be that what the courts are faced with is not so much a stark choice of alternatives but a spectrum of possibilities in which one compartment or description fades gradually into another. At one end of this spectrum there may be cases in which a fundamental obligation may have been so outrageously and flagrantly ignored or defied that the subject may safely ignore what has been done and treat it as having no legal consequences upon himself. In such a case if the defaulting authority seeks to rely on its action it may be that the subject is entitled to use the defect in procedure simply as a shield or defence without having taken any positive action of his own. At the other end of the spectrum the defect in procedure may be so nugatory or trivial that the authority can safely proceed without remedial action, confident that, if the subject is so misguided as to rely on the fault, the courts will decline to listen to his complaint."

In *Tham Hing Kwai* v. *The State of Negri Sembilan & Ors.*[6] the Court of Appeal, following its earlier decision in *The Collector of Land Revenue, Tapah* v. *Chong Loke Chong & Anor.*[7] (at page 65), held (at page 40) that if a Collector desires in exercising his powers as such to recover arrears of land revenue by putting up the property for sale in default of payment, he must comply strictly with the requirements prescribed by the Land Code and that if he fails to do so his power or right to sell the land never arises and his act in selling the land of the registered holder is an unlawful act and an invasion of the right of property of the land holder.

We now have to consider and examine the transgressions committed by the Collector in purporting to forfeit the land in question, the first and perhaps one of a most substantial and material nature being non-compliance with the provisions of section 97(2) which we have earlier referred to. In considering the result of non-compliance therewith and its effect on any subsequent forfeiture purported to be consummated it is necessary to consider the conceptual scheme and purpose of the relevant provisions of the Code in this respect, and surprisingly four highly salient provisions in the Code on this aspect were not canvassed by counsel on either side or considered by the learned judge.

Section 93 enacts that land rent is primarily a debt due to the State Authority by the registered proprietor and, without prejudice to the forfeiture provisions in the Code for non-payment thereof, shall be recoverable by action brought by the State Director of Lands & Mines under section 16. Land rent is not *per se* a charge on the land, unlike, for instance, estate duty which is a first charge on property passing on death by virtue of the provisions of section 25 of the Estate Duty Enactment, 1941. It is therefore all the more essential in exercising the powers of forfeiture for non-payment of land rent to observe closely the prescribed procedure in relation thereto and particularly so with regard to notice thereof to affected interests, both extant and futurable. A note of the service of a notice of demand on the registered proprietor in Form 6A is required by section 97(2) to be endorsed by or at the instance of the Collector on the register document of title to the land to which the notice relates. This requirement is clearly to give notice to all and sundry with existing or prospective interests in the land in question that a forfeiture may be imminent in the event of non-compliance by the registered proprietor with the notice of demand, and the endorsement required by section 97(2) has in our view the purpose, force and effect of a caveat to the world at large to this end.

That this is indeed so is borne out by the provisions of section 98 which enact that the persons or bodies specified in subsection (1) thereof may in addition to the registered proprietor pay to the Collector the sum demanded, no doubt to protect and prevent any jeopardy to their interests in the land. That subsection also provides for service as soon as may be after the notice is served on the registered proprietor of a copy of the notice to which there shall be appended an additional notice set out in the supplement to Form 6A on every such person or body, but there is no evidence in the affidavits filed to show that such service was effected on the United Asian Bank which then held an existing charge on the land. We are well aware that section 134(3) provides for a presumption until the contrary is proved that all notices required to be served under section 98 were duly and regularly served but we would at least have expected the Collector to have mentioned this in his affidavit in recounting the steps he had taken in purporting to effect the forfeiture if in fact this had been done. The remaining subsections of section 98 provide for recoupment by the payor of any sum so paid from the registered proprietor or by deduction from any rent then or thereafter payable by him. Notice of the action taken under section 97(1) to persons outside the purview of section 98, as, for example, intending purchasers and others with prospective interests in the land, must surely be by the endorsement on the title prescribd by section 97(2).

Section 99 provides that if the sum demanded by the notice under section 97 is tendered to the Collector within the time specified therein the notice shall thereupon cease to have effect and it goes on specifically to stipulate that the Collector shall cancel or cause to be cancelled the note endorsed pursuant to section 97(2) on the register document of title to the land. This provision, again, in our view, clearly manifests the imperative necessity for such endorsement to have been made as a condition precedent to validate any forfeiture effected in the event of non-payment of the sum demanded and the mandatory nature of that requirement.

Section 134(1) enacts that the validity of a forfeiture shall not be challenged in any court except by means of or in proceedings consequent upon an appeal under section 418 against the order of the Collector under section 100. Subsection (2) of section 134 provides that no order of the Collector under section 100 shall be set aside by any court except upon the grounds of its having been made contrary to the provisions of the Code or of there having been a failure on the part of the Collector to comply with the requirements of any such provision. It then goes on to provide that no such order shall be set aside by reason only of any irregularity in the form or service of any notice under sections 97 and 98 unless in the opinion of the court the irregularity was of a significant nature. It is clear that this subsection specifically provides that irregularity in the form or service of a notice is not by itself a sufficient ground for setting aside the order of forfeiture unless the court considers it otherwise; it says nothing about and makes no exception with respect to the failure to make the endorsement under section 97(2) which clearly comes within its opening provisions with regard to the grounds for setting aside an order of forfeiture as having been made contrary to the provisions of the Code or of there having been a failure on the part of the Collector to comply with the requirements of any such provision.

On a consideration of the several provisions we have discussed it is abundantly clear that conformance with the provisions of section 97(2) is mandatory and non-compliance therewith would vitiate any subsequent forfeiture effected in the event of failure by the registered proprietor to comply with the notice of demand served on him. No intending purchaser would commit himself to purchase land if faced with notice by the required endorsement on the title thereto without taking steps to protect his interest.

Adverting to the matter before us, there is no such endorsement and that by itself is fatal. The note or endorsement we have earlier alluded to in setting out the narrative of ensuing events is undated and unsigned and it is not disputed that it was in fact made between January 23 and February 8, 1980, some 16 months after service of the notice of demand on the registered proprietor on September 19, 1978,

and that too only after the presentation for registration on behalf of the appellants of the several instruments we have referred to. It does not in any event comply with section 97(2) as it is not a note or endorsement of the service of the notice but purports to refer to the issue of the notice on September 18, 1978 and its registration, whatever that means, on September 25, 1978. It was clearly an attempt to regularise the position *ex post facto* and no less than a manoeuvre for the obfuscation of the failure to comply with an essential requirement of the Code and even then failed in its contents to meet the requisite nature of the endorsement under section 97(2). This note or endorsement was clearly made in *fraudem legis* — it was a fraud on the law, and so too was the Registrar's caveat entered on February 9, 1980 after receipt of the instruments presented for registration and once again evidently adhibited to rectify a hopeless situation retrospectively. The respondent rejected two of the instruments presented for registration by his letter of January 29, 1980 and the other two on January 31, 1980 well before he entered the Registrar's caveat and after presentation of the instruments by the appellants for registration, and furthermore there is no indication in the affidavits filed by the respondent of compliance with the provisions of section 321(2) for service on the registered proprietor of a notification in Form 19A of the entry of the caveat.

The question next arises as to whether there was compliance with the provisions of section 100. That section stipulates that if by the end of the specified period the whole sum demanded by the notice has not been tendered the Collector shall thereupon by order declare the land forfeit to the State Authority. The Collector says in his affidavit that he did by order so declare on June 21, 1979 but the order exhibited thereto is Form 8A which is a notification of the forfeiture under section 130(1) for publication in the *Gazette*. Section 130(1) provides for such publication of the notification of forfeiture in Form 8A as soon as may be after the making of an order under section 100 declaring the land forfeit to the State Authority. There should therefore, in our view, be a separate order previously made under section 100 distinct from the notification of forfeiture in Form 8A.

We cannot agree with the learned judge when he says in his judgment that the order declaring the land forfeit under section 100 refers to the order in Form 8A to be published in the *Gazette* and is in the form of such *Gazette* notification. There is no form provided for an order under section 100 in the Code but the Collector can certainly make a simple order in the terms of the section on default by the end of the specified period declaring the land forfeit to the State Authority or even perhaps make a minute to this effect in the relevant file. It is clear from the very provisions of Form 8A that it is only a notice of reversion to the State to the effect that the forfeiture has taken effect on the day of publication, such forfeiture referring to the order made declaring it under section 100 as expressly specified in the recital in that Form. Our conclusion is substantiated by section 134(1) which specifically provides for challenging the validity of a forfeiture by means of or in proceedings consequent upon an appeal under section 418 against the order of the Collector under section 100. There must be such an order and section 100 prescribes that when such an order is made the provisions of sections 130 to 134 which are only consequential provisions shall have effect with respect thereto accordingly.

We now revert to a consideration of the provisions of section 130(1) *ex visceribus verborum* which require the Collector to publish in the *Gazette* a notification of the forfeiture in Form 8A as soon as may be after the making of an order under section 100. The Collector says in his affidavit that he declared the land forfeit to the State Authority on June 21, 1979 and that this order was duly served on the registered proprietor on June 23, 1979 although there is no stipulation for such service in the Code. As we have seen there was no order as such under section 100 but what the Collector is referring to is only the notification in Form 8A under section 130(1), but even then and in any event the notification of forfeiture in Form 8A was only published in the *Gazette* on January 31, 1980, more than 7 months later, which can hardly be said to be 'as soon as may be after the making of an order under section 100', without stretching that requirement well beyond any conceivable latitude that can be properly given in the circumstances.

The publication in the *Gazette* was contrived as an afterthought only after the presentation of the appellants' instruments in nothing more than a blatant attempt to forestall their registration and justify their rejection and avoid the consequences of the grave and fatal omission of the Collector to have done so as far back as June 1979. We are fortified in this conclusion by the fact that two of the instruments presented by the appellants for registration were rejected and returned by the respondent by his letter of January 29, 1980 — 2 days before the notification of forfeiture in Form 8A was gazetted and some 11 days before he entered a Registrar's caveat, and the other two on the very day of the publication in the *Gazette* and some 9 days before the entry of his caveat. We must emphasise that section 130(1) specifically provides that the forfeiture shall take effect as mentioned in section 131 only upon publication in the *Gazette* of the notification of forfeiture in Form 8A. There is furthermore no indication in the affidavits of the respondent and the Collector of compliance with the provisions of subsection (2) of section 130 requiring copies of the notification published under subsection (1) to be published in accordance with the provisions of section 433 and for the registration by or at the instance of the Collector of a memorial thereof upon the register document of title to the land. Section 131(a) prescribes that upon the taking effect of the forfeiture, that is to say, after compliance with the provisions of section 130(1), the land shall revert to the State Authority as State land, freed and discharged from all titles and interests subsisting or capable of arising immediately before the forfeiture took effect. If the purported forfeiture had not taken effect in relation to the land in question until January 31, 1980 when Form 8A was gazetted, then clearly

it could not have affected the instruments presented for registration prior to that date.

The trilogic provisions of sections 97(2), 100 and 130(1) are in ultimate analysis clearly mandatory and non-compliance therewith will vitiate any purported forfeiture which can be voided at the instance of the appellants under the provisions of section 134. The learned judge was therefore wrong in his conclusion that since the Collector has 'rightly or wrongly completed the forfeiture' the land is now State land, as once the forfeiture can and should be and is in fact set aside there would be a reversion to the *status quo ante.*

The learned judge then *suo motu* took the point not raised by either side that setting aside the forfeiture would in fact be tantamount to recovery of the land from the State Authority and that this is prohibited by section 29 of the Government Proceedings Ordinance, referring in this connection specifically to the provisions of section 29(1) proviso (b) and (2) thereof. We must wholly dissent. Section 29 of the Government Proceedings Ordinance has no relation or relevance whatsoever to the proceedings instituted by the appellants and no question of recovery of the land arises. Section 134 clearly empowers a challenge to be made by the stipulated procedure to the validity of any forfeiture under the Code and provides for such forfeiture to be set aside on the grounds specified therein, and to hold as the learned judge did would be to fly in the face of that provision in the Code and conclude on a fallacy that there is in fact an inconsistency and conflict between that provision and section 29 of the Government Proceedings Ordinance when in fact there is none.

Even assuming for a moment for the sake of argument that setting aside a forfeiture under the Code would amount to proceedings against the Government of the State of Malacca for the recovery of land, what proviso (b) of section 29(1) of the Government Proceedings Ordinance debars is an order as such for the recovery of land but it permits in lieu thereof an order declaring that the plaintiff in any such proceedings is entitled as against the Government to the land which is exactly the effect of any order of court made under section 134(2) setting aside the order of the Collector declaring the land forfeit to the State Authority.

We would also observe that the declarations made by the learned judge that the respondent was wrong in refusing to register the instruments presented by the appellants are futile as they stand in that, if anything, they are only of academic interest and sterile in effect and give no satisfaction to the appellants in respect of the relief they claim, the core and substance of which is an order directing the respondent to register the instruments presented by them.

THE RESULT

We accordingly find that the purported forfeiture of the land in question by the Collector is invalid and must be set aside. We therefore allow the appeal with costs, affirm the order made by the learned judge declaring that the respondent was wrong in law to have refused to register the instruments presented by the appellants but go on to declare that the purported forfeiture of the land in question is invalid and that it be set aside, order that the Registrar's caveat entered on February 9, 1980 be expunged and direct the respondent to register the instruments presented for registration by the appellants. The deposit in court by way of security is to be refunded to the appellants.

POSTLUDE

The power to forfeit alienated land provided for under the Code is a useful and essential piece of heavy defensive artillery entrusted to the State Authority for the conservation of public revenue and protection of the public weal. An order of forfeiture can only be set aside on grounds circumscribed by the provisions of section 134(2) and then too not lightly for insubstantial cause. We have therefore thought it necessary to deal with the matter before us at some length to show why it has been necessary to do so in this case.

In tune with the prelude with which we commenced at the outset, we would by way of postlude in restating the message this decision delivers enjoin every official concerned with or involved in exercising powers and duties under the Code and related legislation to regard this judgment as a regrettably necessary but solemn caveat, giving warning, loud and clear, against any wanton disregard or sloppy application of express statutory provisions in the exercise of their functions, and one to be understood, marked and digested as such. We would add that they must strive to be *au fait* with the law they have to administer and should not hesitate in the course of their statutory duties to seek legal advice whenever necessary from the State Legal Adviser or his confreres and should never put the latter in the invidious and perhaps even intolerable position they found themselves in these proceedings of having both in the court below and before us to make feeble attempts at *ex post facto* justification for the inexcusable defaults of others on a *post hoc ergo propter hoc* premise, quite apart from unnecessarily constraining the justly aggrieved to pit themselves in curial combat against the massive and bottomless purse of the State — much to the delight, perhaps, of the legal profession.

Appeal allowed.

Solicitors: *Chan & Chia.*